

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 153 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ABDUL RAHMANSHA GULABSHA RAFAI

Versus

JENABEN JUSABBHAI

Appearance:

MR SANDIP C SHAH for Petitioners
MR NP NANAVATI for Respondent No. 1
SERVED for Respondent No. 2

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE S.D.DAVE

Date of decision: 20/09/96

ORAL JUDGEMENT

Learned advocates jointly request that this matter may be taken up for hearing and finally disposed of. This matter is accordingly disposed of today.

2. The appellants have preferred this appeal against the award made by Motor Accident Claims Tribunal, Kutch at Bhuj on 9th October 1995 in Motor Accident Claim

Petition No. 60 of 1989, whereby the appellants, original respondents, were directed to pay a sum of Rs.2,00,000/- with cost and 15% simple interest from the date of the petition.

3. At the time of the accident on 23.11.1985, appellant No. 1 was at the steering of truck No. G.T.W. 8750 while the deceased, husband of respondent No. 1 and father of respondent No.2 herein, was working as a Cleaner. There is no dispute about the insurance of the vehicle. The Tribunal came to the conclusion that at the relevant time, appellant No. 1 was driving the truck in a rash and negligent manner, as a result of which the deceased fell from the truck and died.

4. So far as the evidence is concerned, there is no serious dispute before us and we accept the same. The accident took place on account of rash and negligent driving, as a result of which the deceased met with the unfortunate death.

5. On behalf of the appellants, a contention has been raised that the deceased at the relevant time was a Cleaner and, therefore, he was entitled to claim compensation under the provisions contained in the Workman's Compensation Act, and not under the Motor Vehicles Act.

It is further submitted that even if the income is accepted, the multiplier of 20 as awarded in the instant case, is on the higher side and at the most a multiplier of 15 should have been considered and applied looking to the age of the deceased.

6. In the case of SURESH CHANDRA vs. STATE OF U.P. reported in 1996 ACJ 1, the Apex Court considered a case wherein the appellant met with an accident by a road roller, as a result of which his right leg had to be amputated. As the accident occasioned due to negligence on the part of the person who drove the road roller, the appellant moved a claim petition before the Tribunal. It was held that on account of negligence on the part of the person who drove the road roller in question, the accident took place and the Tribunal ultimately awarded compensation of Rs.1,45,000/- with interest at 12% p.a. On appeal, the High Court accepted the finding of the Tribunal that the accident had occasioned on account of the negligence on the part of the person who drove the roadroller and also accepted the contention that had the claimant moved the Commissioner of Workmen's Compensation he would have secured only Rs.85,000/-, and therefore,

reduced the compensation from Rs.1,45,000/- to Rs.85,000/- with 12% interest. The Apex Court held that :-

"We do not think that the High Court was right in accepting that reasoning on the facts of this case when the finding is that the accident had occasioned while the roadroller was on the move and the negligence was on the part of the person who drove the roadroller belonging to the respondents."

In the light of the aforesaid decision, the first contention raised on behalf of the appellants fails.

7. A Division Bench of this Court, in the case of HUSSEINBHAI VS. LALLUBHAI reported in 1984 (1) G.L.R. 221, considered a case where the deceased, who was in his thirties, was the sole bread winner of the family. The Division Bench held that it would be proper to award a multiplier of 15 while awarding damages under the head of dependency benefit. Mr. Shah, learned advocate for the appellant submitted that in view of this decision, a multiplier of 15 may be awarded. Mr. Nanavati, learned advocate for the respondents could not persuade us to take a different view than that has been taken by the Division Bench in the aforesaid case. Thus, the learned advocate for the appellant succeeds in the second contention raised by him.

8. In the result, the appeal is partly allowed. The award passed by the Tribunal stands modified to the extent that the multiplier shall be 15 instead of the multiplier of 20 awarded by the Tribunal. We do not disturb the amounts awarded by the Tribunal under other conventional heads. The appellants are directed to deposit the amount with the Tribunal within a period of four weeks from today and thereupon the amount deposited shall be disbursed as per the order passed by the Tribunal.

csm./